



Bob Aaron bob@aaron.ca

June 9, 2007

Should vendor disclose a property's past?

Does Ontario need a law requiring real estate agents or sellers to disclose whether a home being sold has a history of violence?

The question arises in the wake of the publicity surrounding the sale of a house in rural Lake County, Fla., last month. On May 5, when John and Kathy Johnson and their 24-year old daughter Christina began to move into the \$227,000 house they had just bought, they were shocked to learn from a neighbour that the Greenbrier St. residence was the scene of a grisly triple murder and suicide.

Back in February 2006, local police officer Michael Mount shot his estranged wife Kim, fellow officer Joe Gomez and Gomez's wife Serena in a jealous rage, before turning the gun on himself.

Six-year old Justin Gomez inherited the house. His maternal grandmother, Debra James, represented the estates of her daughter and son-in-law. She listed the house with Larry Beard, owner of Beard Pippin Properties Inc.

James specifically instructed Beard not to reveal details of the murders and suicide to potential buyers. A Florida state law allows real estate companies to withhold details about a house if they would tend to stigmatize the property.

That law says that the fact that a property was the site of a homicide, suicide or death is not a material fact that must be disclosed in a real estate transaction.

Since the purchasers were moving into the area from another part of Florida, they were not aware of the home's grisly history.

The Johnsons have decided not to move into the house, and have put it back on the market. Relying on an old Catholic tradition that purports to speed the sale of real estate, they buried a statue of St. Joseph in the yard.

"There was no way we could ever stay here," Kathy Johnson told a local newspaper. "It would be like living in a morgue."

Events such as homicides, suicides and deaths, or even the allegation that a house is haunted have been known to affect the value of a property.

The National Association of Realtors in the U.S. requires its members to reveal all material factors that might affect the desirability of a house, but psychological factors are a grey area.

In a study published in 2000, James Larsen, a professor at Wright State University in Ohio, surveyed more than 100 stigmatized houses, including those associated with murders, sex scandals, suicides and hauntings.

Ohio does not have a law requiring disclosure of real estate stigmas, and Larsen discovered that disclosure practices varied widely. More than one-third of the surveyed brokers disclosed relevant information to all potential purchasers, but 19 per cent never disclosed the information at all.

Larsen's study concluded that stigmatized homes sold for just 3 per cent less than those not associated with scandal or violence, but stayed on the market for 45 per cent longer than average.

American law books are filled with reports of cases involving the lack of disclosure of property stigmas. Typically, the vendors and the real estate agents get sued by unhappy buyers. About half of the U.S. states have disclosure laws, and the other half do not.

Toronto real estate appraiser and educator Barry Lebow is a frequent lecturer on haunted and stigmatized houses.

As the unknowing former buyer of a house that was the site of a messy suicide, Lebow believes Ontario law should protect buyers and require disclosure.

"Quebec has disclosure laws," he told me, "while to the best of my knowledge the rest of the country is a free-for-all."

Frequently, says Lebow, the realtor becomes the "fall guy" for failing to disclose the history of a house, even if the seller is not totally honest with the listing agent.

He called on Queen's Park to enact a law requiring vendor disclosure of events that could stigmatize property.

Perhaps there should even be a registry of stigmatized properties. After all, the Toronto police maintain a list of marijuana grow operations, but not (to my knowledge) a list of the local homes that have been the sites of suicides, murders or other grisly crimes.

In the meantime, for most buyers of stigmatized homes in this province, Ontario law remains "buyer beware."

Bob Aaron is a Toronto real estate lawyer. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at www.aaron.ca/columns/toronto-star-index.htm.